



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0115]

RIN 1625-AA09

Drawbridge Operation Regulation; Grosse Tete Bayou,  
Iberville Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the Union Pacific railroad swing bridge over Grosse Tete Bayou, mile 14.7, Iberville Parish, Louisiana. This bridge has been modified from a swing bridge to a fixed bridge and the current special operating regulation is no longer applicable or necessary.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG-2012-0115 and are available by going to <http://www.regulations.gov>, inserting USCG-2012-0115 in the "Keyword" box, and then

clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jim Wetherington, Bridge Specialist, Coast Guard; telephone 504-671-2128, e-mail james.r.wetherington@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative

Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Union Pacific railroad swing bridge requiring the draw operations in 33 CFR 117.449 (a) was modified to be a fixed span bridge in May of 2012.

The bridge operator and those transiting in the vicinity of this bridge have not executed any draw operations since the regulation that governs the bridge was changed to state that "the draw. . . need not be opened for the passage of vessels" on February 23, 1976. At that time, all of the internal workings of the bridge were removed.

The Coast Guard has also determined that the waterway is non-tidal and not susceptible to interstate or foreign commerce thus making the bridge exempt from bridge permit requirements under Section 107 of the Coast Guard Authorization Act of 1982 (33 U. S. C. 530). That determination allowed the bridge owner to modify the

existing bridge to permanently remove the machinery from the bridge and make modification to the swing span portion of the bridge to render it as a fixed bridge without a permit. Because of the modification from a swing bridge to a fixed bridge, the current regulation is no longer applicable and should be removed from publication. For these reasons, good cause exists for not publishing a NPRM with respect to this rule because it is unnecessary.

For similar reasons, under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register (FR). The railroad bridge has had no openings in 61 years. It has effectively been a fixed bridge for 36 years due to the lack of internal machinery. This bridge has now been modified to a fixed bridge. As such, the bridge is not required to have an operating regulation. This rule only makes a minor change to the Code of Federal Regulations (CFR), omitting a regulatory requirement that is no longer applicable or necessary. Therefore, providing a 30 day notice before making this rule effective is unnecessary.

#### B. Basis and Purpose

The Union Pacific railroad swing bridge across Grosse Tette Bayou, mile 14.7, was modified into a fixed bridge in

May of 2012. The modification of this bridge from a drawbridge to a fixed bridge necessitates the removal of the drawbridge operation regulation pertaining to this bridge.

The regulation governing the operation of this bridge is found in 33 CFR 117.449 (a). The purpose of this rule is to remove the existing regulation from the CFR since it governs a bridge that no longer requires a drawbridge regulation.

#### C. Discussion of Final Rule

The Coast Guard is changing the regulation in 33 CFR 117.449 by removing restrictions and the regulatory burden related to the draw operations for the Union Pacific railroad swing bridge, which has been modified from a moveable to a fixed bridge, without publishing an NPRM. The change removes the section of the regulation governing the bridge since the bridge will no longer be required to comply with 33 CFR 117. This change does not affect vessel operators using the waterway as this bridge has not opened since 1951 and has not had the ability to open since 1976.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below

we summarize our analyses based on a number of these statutes or executive orders.

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The bridge has been unable to open since 1976. The removal of the drawbridge regulation does not impact vessel traffic because the current conditions have been in place for decades. Additionally, the bridge has been modified to be a fixed bridge so it cannot accommodate vessel traffic.

#### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Since the drawbridge across the Grosse Tete Bayou, mile 14.7, in Iberia Parish, LA has been modified to a fixed bridge; the regulation governing draw operations for this bridge is no longer needed. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business

and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person



listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice

Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant

regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a

categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Section 117.449 is revised to read as follows:

§ 117.449 Grosse Tete Bayou.

The removable span of the S377 Bridge, mile 15.3 near Rosedale, shall be opened for the passage of vessels if at least 48 hours notice is given.

Dated: August 25, 2012

Roy A. Nash

Rear Admiral, U. S. Coast Guard

Commander, Eighth Coast Guard District

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